

ENTERED

October 13, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

RODOLFO MARTINEZ ALVAREZ,

Petitioner,

v.

BOBBY LUMPKIN,

Respondent.

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Civil Action No. 6:21-CV-00019

ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION

Before the Court is the September 7, 2021 Memorandum and Recommendation (“M&R”) signed by Magistrate Judge Jason B. Libby. (Dkt. No. 21). The M&R addresses Petitioner Rodolfo Martinez Alvarez’s habeas corpus petition under 28 U.S.C. § 2254, challenging his 2017 state conviction for aggravated assault of a woman.¹ In the M&R, Magistrate Judge Libby recommends granting Respondent Bobby Lumpkin’s Motion for Summary Judgment, (Dkt. No. 18), and dismissing the action as time barred under the limitations period set forth in the Antiterrorism and Effective Death Penalty Act (“AEDPA”). *See* 28 U.S.C. § 2244(d)(1). Magistrate Judge Libby further recommends denying a certificate of appealability. *See* 28 U.S.C. § 2253(c)

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); General Order No. 2002-13. No

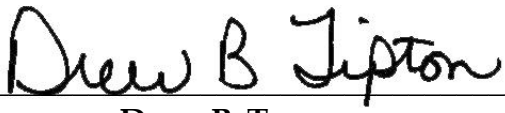
¹ Alvarez was separately convicted of murdering a child for the same conduct—a highspeed car crash while Alvarez was under the influence of alcohol—that resulted in his aggravated assault conviction. *See* (Dkt. No. 21 at 2 n.1). Alvarez challenges the murder conviction in a separate habeas action, for which Magistrate Judge Libby issued a separate M&R. Civil Action No. 6:21-CV-21, (Dkt. No. 22).

party has objected.² As a result, review is straightforward—plain error.³ *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). No plain error appears. Accordingly, the Court **ACCEPTS** the M&R as the Court’s Memorandum Opinion and Order.

The Court **GRANTS** Respondent Bobby Lumpkin’s Motion for Summary Judgment and **DISMISSES WITH PREJUDICE** as time barred Alvarez’s Section 2254 habeas petition. The Court **DENIES** a Certificate of Appealability.

It is SO ORDERED.

Signed on October 12, 2021.


DREW B. TIPTON
UNITED STATES DISTRICT JUDGE

² Though Alvarez did not file objections to the M&R, he did file a Notice of Appeal on September 17, 2021. (Dkt. No. 22). Magistrate Judge Libby issued an order striking the Notice of Appeal because it was prematurely filed. (Dkt. No. 23).

³ By contrast, when a “district court undertakes an independent review of the record,” the “review is *de novo*, despite any lack of objection.” *Alexander v. Verizon Wireless Servs., L.L.C.*, 875 F.3d 243, 248 (5th Cir. 2017).